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In re Application of :
Kaneko et al. : DECISION ON APPLICATION
Application No. 09/925,673 : FOR
Filed: August 9, 2001 : PATENT TERM ADJUSTMENT
Atty Docket No. 01376CIP/HG :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE filed June 22, 2005. Applicants request that the initial determination of patent term adjustment be corrected from one hundred sixty-two (162) days to two hundred thirty-one (231) days.

The request is **GRANTED** to the extent indicated herein. The patent term adjustment at the time of the mailing of the notice of allowance has been corrected to two hundred sixty-four (264) days.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is two hundred sixty-four **(264)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On April 5, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 162 days.

First, applicants disclose that the entry of a period of adjustment of 7 days associated with the Office's mailing of a notice of allowance is incorrect. Applicants disclose that the Notice was mailed on August 11, 2004, and not August 20, 2004. This was within four months of the filing of applicants' RCE on April 13, 2004. Thus, there was no delay within the meaning of 1.702(a)(2).

This argument has been considered and found persuasive. For the reasons stated by applicants, the adjustment of 7 days is not warranted.

Secondly, applicants assert entitlement to a period of adjustment of 76 days for Office delay in responding to their RCE filed August 17, 2004. Applicants state that a Notice of Allowance was not mailed until March 3, 2005. Applicants state that a Notice of Allowance dated January 31, 2005, was mailed on March 3, 2005, according to the envelope postmark. In support thereof, applicants submit a copy of the envelope.

This argument has been considered and found persuasive to an extent. It is agreed that the Office's delay should not be determined based on the mailing of a Notice of Allowance on January 31, 2005. Under the circumstances of this case, the delay should be calculated based on the mailing of a proper Notice of Allowance on April 5, 2005 (not the improper mailing on March 3, 2005). Using the April 5, 2005 date, the period of adjustment pursuant to 1.702(a)(2) is 109 days.

In view thereof, the correct Patent Term Adjustment at the time of the mailing of the Notice of Allowance is two hundred sixty-four (264) days.

Applicants' submission of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged.

The application file is being forwarded to the Office of Patent Publication for issuance of the patent. The patent term adjustment indicated on the patent will include any adjustment accrued for Office delay in issuing the patent after payment of the issue fee and satisfaction of all outstanding requirements.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Kery A. Fries". The signature is written in a cursive, slightly slanted style.

Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Attachments: Copy of adjusted PAIR calculation